IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.477 OF 1995

Maruti Ravaji Thombare, aged 46 years Occ: Agri.and Reporter, resident of Bhoyegaon, Tal. Chandwad, Dist. Nasik.]...Appellant (Ori.Accused)

Vs.

State of Maharashtra]..Respondent

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Mr.Prasad Bhujbal Advocate for Appellant
Mr.A.S.Shitole, A.P.P. for State

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : NOVEMBER 29,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant challenges the judgment and order dated 6th September, 1995 passed by the learned Special Judge Nasik in Special Case No. 29 of 1994. By the said judgment and order, the learned Special Judge convicted the appellant under Section 452,504 of IPC and under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (In short ‘Atrocities Act’).

2. Briefly stated the prosecution case is as under:

. The complainant Sunderabai More (P.W.1) was residing in village Lendi in Nasik District. She belongs to Scheduled Caste which is a scheduled tribe. On 14th October, 1994 at about 11 a.m. the accused entered the house of Sunderabai More and asked her to provide him liquor. She told him that she had no liquor with her. The accused then started catching her and said that if she had no liquor, she should allow him to have sexual intercourse with her. The accused caught her breasts, whereupon she started shouting. P.W.2 Vimalbai Mali came on the spot. So also one Gangubai who was neighbour of Sunderabai, came on the spot. On seeing ladies, accused ran away. Thereafter, Sunderabai lodged her complaint. Investigation commenced. In due course, the charge sheet came to be filed.

3. The charge under Sections 452, 504 and 506 of IPC and under Section 3(1)(xi) of the Atrocities Act was framed against the accused. The accused pleaded not guilty and claimed to be tried. His defence is that of total denial and false implication. It is his defence that he is a newspaper reporter and the Investigating Officer A.P.I. Gunjal was angry with

him as he had written some articles against A.P.I. Gunjal. Hence, A.P.I. Gunjal had filed false case against him.

4. The prosecution has examined three witnesses i.e. P.W.1 Sunderabai More is the complainant, P.W.2 Vimalbai Mali the neighbour of Sunderabai and P.W.3 A.P.I. Gunjal is the Investigating Officer. After going through the evidence adduced by the prosecution, the learned Special Judge convicted the appellant as stated in para no.1 above. Hence, this appeal.

5. I have heard Mr.Bhujbal, the learned advocate for the appellant and Mr.A.S.Shitole, the learned A.P.P. for the State and I have perused the record pertaining to the present case. After utmost circumspection, I have reached the conclusion that this appeal deserves to be allowed.

6. The star witness in the present case is P.W.1 Sunderabai More who is the complainant. As the prosecution story has been taken from the examination in chief of P.W.1 Sunderabai More, I do not find it necessary to repeat her evidence in examination in chief here. In the cross examination of P.W.1 Sunderabai More, it has come on record that

she had not seen the accused prior to the incident. Before the incident took place, she had no occasion to talk to him. She did not know where he resides. So also the other witness i.e. P.W.2 Vimalbai Mali also did not know the accused prior to the incident.

7. As far as P.W.2 Vimalbai Mali is concerned, she has stated that she heard shouting, hence she went to see as to why Sunderabai was shouting. When she reached there, she found that the accused was trying to catch Sunderabai. Immediately, thereafter, the accused ran away from the spot. It is pertinent to note that the incident took place within a very short span of time. It hardly lasted for few seconds. The accused was unknown to both P.W.1 Sunderabai as well as P.W.2 Vimalbai. No identification parade has been held in the present case. The accused was not arrested on the spot and he came to be arrested much later. Looking to the facts of the present case, it was necessary to hold the identification parade in order to fix the identity of the accused. Looking to the facts of case, it cannot be conclusively said that the identity of the accused has been proved. In such case, the accused deserves to be given benefit of doubt.

8. In view of the above, the appeal is allowed. The conviction and sentence as imposed by the learned Special Judge, Nasik, by judgment and order dated 6th September, 1995 in Special Case No.29 of 1994 is set aside. The appellant is on bail. His bail bonds shall stand cancelled. Fine amount, if any, paid by the appellant, be refunded to him.

[V.K.TAHILRAMANI.J]